

STATE OF TENNESSEE,

Petitioner,

v.

LEVEL PROPANE GASES, INC.,
an Ohio corporation,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

No. _____

This Assurance of Discontinuance, which shall also be considered an Assurance of Voluntary Compliance (“Assurance”) is entered into between the States of Arizona, Indiana, Iowa, Missouri, New Mexico, Pennsylvania, Tennessee and Wisconsin by their respective Attorneys General (collectively “Attorneys General”) and Level Propane Gases, Inc., an Ohio corporation, its officers, agents, successors, and assigns (collectively “Level”). Level is located at 830 Canterbury Road, Westlake, Ohio 44145. The Attorneys General contend that Level has engaged in conduct in violation of their respective consumer protection statutes,¹ in its advertising, offering for sale, sale and distribution of liquefied petroleum gas (propane) to consumers, as more specifically described in this Assurance.

1. As used in this Assurance, the following terms shall have the following meanings:

A. “Advertisement” means any oral, written, graphic, electronic or pictorial statement or representation directed to consumers in the course of business, regardless of the

¹ Specifically:

Arizona - Arizona Consumer Fraud Act: A.R.S. §44-1521 et seq.

Indiana - Deceptive Consumer Sales Act, Indiana Code 24-5-0.5-1.

Iowa- Iowa Code §714.16

Missouri - V.A.M.S. §407.020 et seq.

New Mexico - Unfair Practices Act, NMSA §57-12-1 et seq.

Pennsylvania - Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq.

Tennessee - Tennessee Consumer Protection Act of 1977, Tenn. Code Ann §§47-18-101 et seq.

Wisconsin- Wisconsin Statutes §§100.18(1), 98.26(1)(c) and Ch. ATCP 121.

medium of communication employed.

- B. “Business Day(s)” means Monday through Friday of any given week.
- C. “Calendar Day(s)” means Sunday through Saturday of any given week.
- D. “Clear and conspicuous” means that the statement, representation or term being disclosed is of such size, color, contrast and audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. The disclosure of any written statement or term must be in close proximity to the terms it purports to clarify, modify, or explain.
- E. “C.O.D.” means cash on delivery.
- F. “consumer” means any person, natural person, individual, governmental agency or entity, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- G. “Contract” means the contract or other written agreement entered into between Level and the consumer prior to the entry of this Assurance.
- H. “Courtesy Fill” means Level will deliver propane to consumers according to Level’s estimate of the consumers’ propane use.
- I. “Lock-in” Agreement means Level’s offer to consumers whereby consumers may guarantee a price of propane for a stated price per gallon for a stated period of time.
- J. “Market Price” means the actual price at which propane gas is currently sold, or has recently been sold in the open market at retail in the usual and ordinary course of trade and competition between sellers and buyers equally free to bargain, as established by records of sales or the last reported price at which the stock sold.
- K. “Material Terms and Conditions” means the price per gallon of propane, delivery date, any fees/charges that the consumer may be required to pay, any conditions affecting the price or delivery date and any other terms or conditions which may affect the consumer’s choice of a propane supplier.
- L. “Minimum Usage” means the minimum number of gallons of propane that a

consumer must purchase during the term of the contract in order to avoid the payment of an underutilization fee.

- M. “Pre-Buy Agreement” means Level’s offer to consumers whereby consumers may pre-pay for a specific amount of propane for a stated price per gallon for a stated period of time by paying for such propane in advance of delivery.
- N. “Spring” means March 21st of any given year.
- O. “Underutilization fee” means the amount a consumer must pay if the consumer does not purchase the minimum number of gallons of propane required under the terms of the contract. It is also the total amount charged to the consumer as calculated by the minimum gallons of propane gas which must be purchased multiplied by the quoted price per gallon.
- P. “Will Call” means Level will deliver propane to consumers after the consumers request delivery of propane.

II. STATES’ POSITION

- 2. Level advertises, offers for sale, sells and distributes propane to consumers in the States of Arizona, Indiana, Iowa, Missouri, New Mexico, Pennsylvania, Tennessee and Wisconsin.
- 3. In its marketing and sale of propane, Level either directly or through implication represents that the consumer will be charged a “price per gallon” for the propane.
- 4. Level has advertised that its “price per gallon” was less than other propane companies due to its ability to purchase propane at lower prices during the non-heating season and store such propane for later use.
- 5. Level has advertised that consumers may lock-in a “level” price for propane for a stated period.
- 6. In a letter to consumers in April 2000, in order to thank them for their loyalty to Level, Level advised the consumers that the consumers’ propane price would be guaranteed until the Spring of 2001. Affirmative action by the consumer was only requested either to

extend the price guarantee “for another full year” into the Spring of 2002, or to enroll in a “pre-buy” program providing additional discounts.

7. In a letter to consumers in September 2000, Level informed consumers that it would not guarantee propane prices through the Spring of 2001 unless the consumers had taken affirmative action to lock-in the price through Spring 2002 or enrolled in a pre-buy program prior to September 2000.
8. In most instances, Level has required its consumers to enter into a written agreement for the purchase of propane titled “Contract for Propane Service and Equipment Lease/Sale.” Level offers Pre-Buy Agreements, Lock-in Agreements and Market-Price Agreements subject to delivery of propane as either a Courtesy Fill consumer or as a Will Call consumer.
9. Level’s delivery drivers have given the Contract to consumers at the time of installation of the propane tank.
10. After consumers sign the Contract with Level, they discover that they are obligated to pay an underutilization fee if they do not use a set amount of propane within a certain time period.
11. The front of the Contract sets forth the following terms:
 - a. Will Call Consumer is quoted price plus additional rate per gallon. C.O.D. is quoted price plus additional rate per gallon. Request for delivery of less than a full fill may be assessed an additional rate per gallon.
 - b. TERM - This contract shall commence on the date executed by Level’s authorized representative (effective date), and shall remain in effect for a term of one (1) year (original term) and shall be automatically renewed for successive one (1) year periods until terminated.
 - c. MINIMUM USAGE - In consideration for the services provided under this contract by Level to consumer, consumer guarantees that he/she/it shall purchase the quantity of propane as set forth in the following schedule during the twelve (12) month period commencing July 1 and ending June 30 (“minimum quantity”).
12. Consumers cannot cancel the Contract during the term of the Contract.
13. At the end of the term, Level unilaterally increases the price per gallon for the propane without obtaining the consumer’s consent to the increase before Level refills the tank at the

higher price.

14. If consumers do not want to pay the increased price to renew their contracts, consumers must then send a written notice to Level terminating the contract; otherwise, consumers must pay for the increased price per gallon.
15. If consumers terminate their Contract instead of renewing it, they are charged additional fees. The amount of these additional fees discourages consumers from terminating the Contract.

III. LEVEL'S POSITION

16. Level states that the allegations of the Attorneys General occurred during a unique period in which propane prices jumped nationwide in an unprecedented fashion. Level further contends that since September 2000, escalation of petroleum and natural gas costs has raised the price of propane, a byproduct of processing crude oil and natural gas, at the same time that petroleum refineries switched to propane fuel and used supplies otherwise available for residential use. During this same time period, Level's service area experienced record low temperatures, thereby increasing the demand for propane while supplies of propane could not be acquired and transported economically by distributors.
17. Level denies that any of its business practices violate state law and Level specifically and categorically denies the allegations made by the Attorneys General, or by those customers the Attorneys General have identified, and admits to no liability for damages alleged to have resulted from any violation of state law.

IV. STATES' ALLEGATIONS

18. The Attorneys General allege that Level violated the consumer protection laws in their respective states in the marketing and providing of propane, storage tanks and related equipment as follows:
 - a. Failing to timely deliver propane to consumers;
 - b. Failing to repair consumer leased tanks in a timely manner;
 - c. Failing to provide adequate consumer service as evidenced by: (i) its lack of

staffing, especially drivers, to handle the market; (ii) its failure to respond to consumers' concerns; (iii) its lack of capacity to answer telephone calls from consumers; (iv) its referral of consumers to the collection unit regardless of the merits of the bill dispute; and (v) its repeated delays in providing propane;

- d. Failing to respond to consumer inquiries and giving consumers inaccurate or misleading information about material facts related to scheduling, delivery, pricing and billing;
- e. Representing that its prices are lower than other propane companies, or "the lowest," when in fact Level fails to disclose that it charges additional fees which other companies may not charge to consumers; thereby, creating a false impression that Level provides propane for a lesser expense than other companies;
- f. Representing that Level's prices would remain "level";
- g. Charging a different price for propane at the time of delivery than the price which is quoted to the consumer;
- h. Failing to clearly and conspicuously disclose the specific date after which the price of the propane no longer will remain firm ("lock-in price") under the Contract;
- i. Failing to honor its guarantee of locked-in prices for the term of the Contract;
- j. Failing to clearly and conspicuously disclose that the consumer will be charged an underutilization fee if the consumer does not use a specific amount of propane during the term of the Contract;
- k. Failing to provide properly sized tanks in order to prevent the consumer from incurring an underutilization fee;
- l. Failing to clearly and conspicuously disclose applicable terms and conditions of certain services, including, the amount of any additional charges, including but not limited to, a tank removal fee, a tank pump out fee and a late payment fee, prior to the consumer entering into the Contract with Level;
- m. Failing to clearly and conspicuously disclose in the Contract that Level will charge a fee to pump out the tank without reimbursing the consumer for the propane

remaining in the tank;

- n. Charging more for an emergency delivery in circumstances where no emergency attributable to the consumer existed, including instances where no emergency existed or the emergency was the result of Level's failure to provide a timely delivery of propane or to perform timely repairs;
- o. Requiring Courtesy Fill consumers to call Level to fill their tanks with propane when the propane in their tank is at a certain percentage instead of periodically checking the consumers' tanks based upon a calculation of the consumers' needs and weather conditions over a certain time period;
- p. Charging Courtesy Fill consumers an additional amount per gallon if the consumers request a delivery of propane for less than a full fill;
- q. Filling consumers' tanks at the market price or at an increased price without providing adequate notice to consumers that their Contract is automatically renewed at the market or increased price, unless the consumers provide written notice of termination after they are billed for the filling of their propane tank;
- r. Failing to clearly and conspicuously disclose that the price charged at the time of Contract renewal will be the market price or an increased price;
- s. Failing to permit consumers to cancel the Contract without any penalties or fees when Level has failed to abide by the terms of the Contract, including but not limited to, failure to deliver propane in a timely manner;
- t. Filling consumers' tanks with propane even though consumers had not authorized the fill or had terminated their contract with Level;
- u. Placing consumers on Will Call or C.O.D. status without prior notification of the reasons for the switch or the higher prices Level charges for Will Call or C.O.D. deliveries;
- v. Promising consumers a customer referral fee (or credit) for recruiting new customers for Level when such referral fee is not permitted by applicable State law or when such referral fee is not credited to the consumer's account as represented;

- w. Using a contract that the consumer signs on the front page and which contains additional purported terms and conditions in faint type on the reverse which consumers are unlikely to view before signing the contract and to which consumers do not specifically assent;
- x. Inserting unconscionable, unfair, or deceptive terms on the reverse side of the contract, including, but not limited to, (i) a provision purporting to reserve to Level the unfettered right to modify the contract unilaterally; and (ii) a provision affording Level the right to sue the consumer in any court having the proper jurisdiction for the action while limiting the consumer to commencing an action against Level only in a court of competent jurisdiction in Cuyahoga County, Ohio.
- y. Failing to provide consumers who have purchased tanks from Level with proof of ownership necessary for these consumers to exercise their right to have their own tanks filled by Level's competitors;
- z. Failing to provide the consumer with the formula or measurement to demonstrate to the consumer that the underutilization fee is a "reasonable" charge and "relates to Level's costs due to the underutilization;" and
- aa. Using unfair and deceptive practices when collecting an alleged debt owed to Level.

V. INJUNCTION/BUSINESS PRACTICES

Accordingly, it is hereby agreed by Level that immediately upon the execution of this Assurance, it shall be permanently enjoined and restrained from engaging in the practices set forth in Paragraph 18 (a) through (aa) and Level agrees to comply with the following business practices and revise the terms of its Contract accordingly:

- 19. In any advertisement or solicitation, Level shall clearly and conspicuously disclose the amount of any fee it may lawfully impose and which it intends to charge consumers, including but not limited to, the tank pump-out fee, tank removal fee and late charges. Any advertisement shall clearly and conspicuously state the price per gallon as the cost of the propane plus the amount of any additional fees. Any advertisement shall clearly and

conspicuously state the total amount owed by the consumer in order to receive the quoted price per gallon by setting forth the minimum number of gallons which must be purchased multiplied by the quoted price per gallon, if Level requires the purchase of a minimum number of gallons.

20. Level shall clearly and conspicuously disclose the terms and conditions of any Pre-Buy Agreements in any advertisements, solicitations, correspondence and/or contracts.
21. Within thirty (30) calendar days from signing this Assurance, Level shall revise its Contracts to comply with the terms of this Assurance ("New Contract"). The New Contract shall be mailed to the consumers with the option to cancel their current Contract or enter into the New Contract with the price of the propane guaranteed for the time period set forth in their current Contract.
22. In the event a potential consumer requests service from Level, Level shall deliver or make available, via mail, facsimile, or electronic transmission, its New Contract to a potential consumer for review and acceptance at least seventy-two (72) hours prior to delivering propane and/or setting of the tank. Upon acceptance of the New Contract by the consumer, Level shall deliver propane and/or set the tank according to the terms of the New Contract.
23. For Level's new and current consumers, Level shall quote, and confirm in writing, the price the consumer will be charged per gallon of propane, the time period for which the quoted price applies and disclose all other material terms and conditions to the consumer. Price quotes given orally over the telephone shall include the price per gallon, the time period for which the quoted price applies, and all other material terms and conditions. Written confirmation shall be through a contract or other written correspondence that includes the price the consumer was quoted orally and what the consumer will be charged per gallon of propane, the time period for which the quoted price applies, and that clearly and conspicuously discloses all other material terms and conditions. Written confirmations shall be sent, at the consumer's option, via mail, facsimile, or electronic transmission, to the consumer within three (3) business days of the oral quote to the consumer. Within three

(3) years from the date of this Assurance, Level shall also include the price per gallon of propane on all delivery receipts.

24. The New Contract shall clearly and conspicuously state all terms and conditions in plain language in order to be easily understood by a consumer, including but not limited to, the following terms, if applicable:

- a. The total amount of the contract price equal to the minimum number of gallons of propane required to be purchased, multiplied by the price per gallon. Such amount shall be initialed by the consumer;
- b. The amount of the fixed price per gallon and the date that the fixed or “lock-in” price per gallon expires;
- c. A statement that if a fixed price per gallon is offered, it will remain the same during the initial term of the contract regardless of whether the consumer uses more than the minimum number of gallons of propane;
- d. The actual amount of any and all fees, penalties, charges, costs, discounts, credits, and refunds that may be lawfully assessed, charged, or owed to the consumer. The New Contract shall have blocks for the consumer to initial beside each fee, penalty, charge, cost, discount, credit, and refund that may be assessed or charged to and/or owed by the consumer or Level;
- e. The terms and conditions under which Level may switch a consumer from Courtesy Fill to Will Call, C.O.D. or Payment in Advance, including the amount of any additional charge per gallon for Will-Call, C.O.D. or Payment in Advance consumers. To be binding, such amount shall be initialed by the consumer;
- f. Level shall not charge consumers a higher rate or levy a surcharge when it places the consumer on C.O.D., Payment in Advance or Will-Call status, unless the consumer has specifically assented, by initialing, to a provision in the New Contract that clearly describes the circumstances under which a consumer may be switched from Courtesy Fill to Will Call, C.O.D. or Payment in Advance and the consequences of such a switch, including all additional fees, surcharges, and rate

increases;

- g. The definition of the “Market Price” which shall be initialed by the consumer;
 - h. A statement that in the event Level breaches any term of the New Contract, the consumer may cancel the New Contract without incurring any additional fees, penalties, charges or costs.
 - i. A statement that if the consumer cancels the New Contract due to Level’s breach of the New Contract, Level will reimburse on a pro rata basis any prepaid fees, charges for equipment and the amounts paid for any propane remaining in the tank at the time Level picks up the tank;
 - j. A statement that the consumer may cancel the New Contract orally; however, in order to ensure cancellation, any notice of cancellation from the consumer should be made in writing and sent to Level via the Internet, United States mail or facsimile.
25. Level shall not misrepresent, or fail to disclose, the price the consumer will be charged per gallon of propane, or any other material terms or conditions in connection with the advertisement, offer, sale or delivery of propane to consumers. In addition, Level shall not attempt to charge a higher price per gallon to a consumer for a delivery of propane than the price per gallon Level previously quoted to the consumer as applicable during the time period in which the propane was delivered.
26. Level shall provide properly sized tanks to consumers according to the consumers’ needs.
27. Level shall automatically and regularly provide propane to Courtesy Fill consumers at regular intervals based upon a calculation of the consumer’s needs and weather conditions over a certain period of time, provided that the consumer is current in his/her payment obligation and has complied with the material terms of the New Contract. This service shall be promptly and automatically provided irrespective of whether Level’s Courtesy Fill consumers request such service. Level shall not allow the propane in the consumer’s tank to fall below the level of 25%. In the event Level fails to deliver propane to the consumer within five (5) calendar days of a request, when the propane in the tank is 25% or less: (i)

the consumer may cancel the New Contract without incurring any additional fees, penalties, charges or costs; (ii) Level shall reimburse the amount paid by the consumer for any fuel remaining in the tank at the time Level picks up the tank; and (iii) upon the request of the consumer, Level shall provide the consumer with its written consent to have another propane supplier fill Level's leased tank on a one-time basis, unless the supplier has its own tank available. At the option of the consumer, said written consent shall be sent via facsimile to a telephone number designated by the consumer or to an Internet site designated by the consumer. Said written consent shall be sent within three (3) hours from the time of the request, if via facsimile or electronic mail, or shall be posted by the end of the current business day if mailed, provided the request is made during ordinary business hours of 8:00 a.m. until 5:00 p.m. Monday through Friday. If such request is made on a Sunday, Holiday or after ordinary business hours, Level shall provide said written consent within three (3) hours of the start of the next business day, if via facsimile or electronic mail, or shall post it by the end of the next business day if mailed. Said written consent shall be in such form and content as necessary to induce a reasonable supplier to fill Level's leased tank. In the event, Level fails to deliver propane to the consumer within said five (5) calendar days of a request, Level shall so notify the respective Attorney General, via facsimile, not later than 12:00 p.m. of the next calendar day following said five (5) calendar days. Courtesy Fill consumers shall not be charged an additional amount per gallon for less than a full fill and may not be switched to Will Call, C.O.D. or Payment in Advance status without their consent.

28. Level shall provide propane gas to Will Call consumers within seven (7) calendar days after receipt of the consumer's call, provided that the consumer is current in his/her payment obligation and has complied with the material terms of the New Contract. In the event Level fails to deliver propane to the consumer within seven (7) calendar days of a request: (i) the consumer may cancel the New Contract without incurring any additional fees, penalties, charges or costs; (ii) Level shall reimburse the amount paid by the consumer for any fuel remaining in the tank at the time Level picks up the tank and (iii)

upon the request of the consumer, Level shall provide the consumer with its written consent to have another propane supplier fill Level's leased tank on a one-time basis, unless the supplier has its own tank available. At the option of the consumer, said written consent shall be sent via facsimile to a telephone number designated by the consumer or to an Internet site designated by the consumer. Said written consent shall be sent within three (3) hours from the time of the request, if via facsimile or electronic mail, or shall be posted by the end of the current business day if mailed, provided the request is made during ordinary business hours of 8:00 a.m. until 5:00 p.m. Monday through Friday. If such request is made on a Sunday, Holiday or after ordinary business hours, Level shall provide said written consent within three (3) hours of the start of the next business day, if via facsimile or electronic mail, or shall post it by the end of the next business day if mailed. Said written consent shall be in such form and content as necessary to induce a reasonable supplier to fill Level's leased tank. In the event, Level fails to deliver propane to the consumer within said seven (7) calendar days of a request, Level shall so notify the respective Attorney General, via facsimile, not later than 12:00 p.m. of the next calendar day following said seven (7) calendar days.

29. Absent unsafe weather and road conditions rendering timely performance impossible, Level shall repair and/or service leased tanks within five (5) calendar days of a consumer request for such repair and/or service. However, in the event an emergency exists whereby a consumer is unable to use his/her propane, Level shall repair and/or service the leased tank within twenty-four (24) hours of the consumer's request. In the event Level fails to repair and/or service leased tanks as set forth in this paragraph, the consumer may cancel the New Contract without incurring any additional fees, penalties, charges or costs and Level shall reimburse the amount paid by the consumer for any fuel remaining in the tank at the time Level picks up the tank.
30. Level shall not charge more for an emergency delivery when the emergency condition was the result of Level's failure to provide a timely delivery of propane.
31. Level shall clearly and conspicuously notify in writing all consumers whose New Contract

renews on an annual basis, no more than ninety (90) calendar days, but at least thirty (30) calendar days before the expiration of the New Contract, of their option to renew the New Contract for an additional one (1) year term. If the consumer, after being informed of any change in price and all other material facts, agrees to renew the New Contract at a different price per gallon than his/her previous New Contract, Level shall send an addendum to the original New Contract setting forth the new amount of the price per gallon, whether the price is fixed or “locked-in” for a certain period, and the date that the price per gallon expires, which date shall be as represented in the notification.

32. If at the end of the term of the New Contract, Level requires the consumer to pay the Market Price for propane, then the consumer will only be obligated to enter into a month-to-month contract which does not require the payment of any underutilization fees. Either party may cancel the contract upon thirty (30) calendar days prior written notice to the other party.
33. Within thirty (30) calendar days of execution of this Assurance, Level shall implement and maintain business practices sufficient enough to avoid the service related concerns, including but not limited to: failure to provide deliveries, repeated missed delivery dates, inability by consumers to reach Level, billing questions immediately turned over to Level’s collection department regardless of the circumstances, and other billing disputes. To address these issues, Level agrees to maintain a staff sufficient to serve the needs of its customers and to comply with the provisions of this Assurance.
34. Level shall not take any detrimental actions against a consumer for any billing dispute, including but not limited to, failing to deliver propane, charging a late fee, placing the consumer on C.O.D., Payment in Advance or Will-Call status, or terminating the Contract, until Level has investigated the dispute and made a good faith determination as to the legitimacy of the dispute.
35. In the event the consumer breaches the terms of the New Contract, Level shall notify the consumer in writing ten (10) business days prior to terminating the New Contract or changing the consumer to C.O.D, Payment in Advance or Will-Call status.

36. To the extent permitted by the applicable law of each of the States, Level shall not charge more than \$20.00 for a late payment, provided that Level has proof the payment was in fact late, ie. a postmarked envelope indicating the payment was mailed after the required payment was to be received, and provided that the charge was clearly and conspicuously disclosed. Level shall not charge a late fee where it is not expressly permitted by law. After five (5) years from the date of the signing and/or filing of this Assurance, Level may adjust the late fee for inflation as measured by the Consumer Price Index, unless a late fee or such adjustment is expressly prohibited by law.
37. Level shall not fill consumers' tanks after the consumers have notified Level that they do not wish to have their tanks filled, have notified Level that they have terminated their contract or Level has received the consumer's termination (whether the termination is effected pursuant to the contract, in response to a breach by Level, or as otherwise provided by law or in this Assurance.) If Level fills the tanks after termination of the contract, Level shall forfeit the propane and allow the consumers to use such propane or shall pay the consumers for the propane (less the price of any propane that was in the tank prior to filling after termination of the contract, if the consumer had not paid for that propane) before Level removes a leased tank.
38. Level shall notify all credit reporting agencies to remove any negative or derogatory information which is incorrect within thirty (30) days of receiving a complaint by a consumer which is supported by evidence that the reporting is incorrect.
39. Level shall maintain records, correspondence, receipts and any other documentation relating to all accounts for consumers of Level while they are consumers of Level and for a period of two (2) years after termination of any relationship between Level and the consumer.
40. Level shall comply with each State's chain referral statutes. Where permitted by State law, Level shall timely pay customer referral fees. Where required by State law, Level shall cease such promotions.
41. Level shall not use any debt collection practices which are in violation of state or federal

laws.

VI. CONSUMER REDRESS

42. Level shall not directly contact its consumers through correspondence, telephone, electronic mail or any other means regarding consumer redress other than as specifically set forth in this Assurance. Level shall not attempt to negotiate a settlement or resolution with consumers in contradiction with the terms of this Assurance, other than as ordered and/or approved by a Court of competent jurisdiction.
43. Level shall retain an independent administrator (“Notification Administrator”) who shall be approved by the Attorneys General. The Notification Administrator shall not have any prior relationship with Level. Level shall assume all liabilities, responsibilities and costs associated with the retaining and employment and compensation of the Notification Administrator. The contract Level uses to retain the Notification Administrator shall clearly indicate that the client for the purposes of the work shall be the Attorneys General, and the Notification Administrator shall be required to fully cooperate with the Attorneys General. The Notification Administrator shall not sell consumers’ names or other account information or use the consumers’ names or other account information for any other purposes than those set forth in this Assurance. If, in enforcing the provisions of this Assurance, the States, after discussing the matter with Level and/or its counsel, believe it is necessary to review the Customer List and/or retain the Customer List to contact consumers, the parties agree that the Customer List shall be provided pursuant to the individual State’s civil investigative demand or subpoena statutes, if such statutes deem the information confidential, otherwise, the individual State will treat the information as if it is confidential under the State’s freedom of information/public records act. However, the provisions of this paragraph regarding review by the States of the Customer List shall not apply to the State of Iowa. Level understands that the Attorney General of Iowa will serve Level with a Demand for Information to obtain the Customer List from Level pursuant to Iowa Code section 714.16(3) should the Attorney General deem it necessary to obtain the Customer List. Level does not waive any defense it may raise to any legal action which

may be filed by the Attorney General of Iowa to obtain a response to that Demand for Information.

44. Level shall provide to the Notification Administrator, within ten (10) business days of execution of this Assurance, an alphabetical list of the names, addresses, telephone numbers and account numbers of each current consumer/customer in such Attorney General's State, and each former consumer/customer who purchased propane from Level any time after August 1, 1998. Level shall divide the list into two (2) separate categories of consumers as follows: (i) consumers who have already filed a consumer complaint with their respective Attorney General or other appropriate state agency, regardless of whether Level believes it has resolved these consumer complaints ("Consumers A") and (ii) all other consumers who purchased propane from Level any time after August 1, 1998. ("Consumers B").
45. Within fifteen (15) calendar days from receiving the consumer list from Level, the Notification Administrator shall send two (2) separate notification letters to consumers on letterhead designated by the Attorneys General by first class United States mail and on behalf of the respective Attorneys General. The Attorneys General will provide the Notification Administrator with a notification letter to be sent to Consumers A and another notification letter to be sent to Consumers B. Such notification letters shall be sent through the Notification Administrator from a business location independent from Level.
46. If any notification letter is returned undeliverable, the Notification Administrator shall take or cause reasonable steps to be taken to locate the consumer, including skip tracing, and send the notification letter again through the Notification Administrator, allowing such consumer ninety (90) business days to respond from the subsequent mailing.
47. The Notification Administrator shall conduct a statistically reliable sample of Consumers A and Consumers B to determine whether all of the consumers were provided with the required notification letters. The Notification Administrator shall provide a written report to the Attorneys General within thirty (30) business days from the mailing that certifies that Level, through the Notification Administrator, has sent the required notification letters and

describes the process used to locate consumers whose letters were returned undeliverable.

48. Level shall refund, chargeback and/or credit to consumers who have complained or who complain regarding the terms of the Contract to Level, the States, or to any other agency that provides complaint information to the States, including the Better Business Bureau, within ninety (90) business days from the date of the letter sent by the Notification Administrator on behalf of the Attorneys General to the consumers notifying them of the refund provisions under this Assurance, regardless of whether Level claims that such consumers have already settled their consumer complaints with Level or signed a release, excepting those who, with the assistance of legal counsel, have signed releases or otherwise made settlements, the following:

- a. all underutilization fees assessed;
- b. all tank pick up fees and taxes assessed;
- c. all tank pump-out fees assessed;
- d. the difference between the price of propane set forth in the consumer's pre-buy or lock-in contract and the cost actually charged. If consumers have not yet paid the increased amount to Level, Level will adjust the consumers' bills to reflect the price of propane set forth in the consumer's pre-buy or lock-in contract.;
- e. for those consumers who have not taken any affirmative action to enter into pre-buy or lock-in contracts with Level but were promised a certain price per gallon in writing, including but not limited to, any correspondence or delivery receipts, the difference between the cost actually charged and the price of propane represented in the writing plus twenty percent (20%).² If consumers have not yet paid the increased amount to Level, Level will adjust the consumers' bills to reflect the price of propane as set forth in this subparagraph.³;
- f. for those consumers who received delivery of propane after the end of the term

² Refund = Price charged - [Quoted price per gallon + (.20 x Quoted price per gallon)]

³ If consumers have entered into a separate agreement with Level which provides for a greater refund, such refund will be honored by Level.

of the Contract at an increased price per gallon than the price set forth in their Contracts and who canceled their Contract at the end of the term due to the increase in the price per gallon of propane but were billed at the increased amount, the difference between the amount charged and the amount set forth in their Contracts for any propane used by the consumer. For any propane remaining in a tank which was leased from Level at the time Level removes/ had removed such tank, a credit, chargeback or refund for the amount charged for such propane;

- g. any lock-in fee paid by any consumer if the consumer did not receive the price promised by Level at any time the locked-in price promise was to remain effective;
- h. any fees, deposits, or other payments paid to Level by any consumer but not disclosed in the Contract or not lawfully charged, including but not limited to, surcharges for consumer's use of credit (or credit card), adjusting the customer's account to zero balance when the customer had a credit balance in the account, miscellaneous fees, deviation fees, and retrieval fees;
- i. any late payment penalty, without qualification, that has been assessed based upon an underutilization charge, a tank pump-out fee, a disconnection fee, reconnection fee, tank pick-up fee, or the difference between the cost quoted for propane and the cost actually charged; and
- j. any late payment fee or returned check fee collected where such fees were not permitted by law.

49. Level shall retain an unrelated third party certified public accounting firm, who shall be approved by the Attorneys General, to review the consumer complaints and determine the amount of the refund, chargeback and/or credit due to consumers under paragraph 48 of this Assurance. ("Accountant").⁴ The Accountant shall not have any prior relationship with Level. Level shall assume all liabilities, responsibilities and costs associated with the retaining and employment and compensation of the Accountant. The contract Level uses

⁴ Nothing in this Assurance shall prevent Level from using the same independent entity for both the Notification Administrator and the Accountant.

to retain the Accountant shall clearly indicate that the client for the purposes of the work shall be the Attorneys General, and the Accountant shall be required to fully cooperate with the Attorneys General. Level agrees to waive any accountant-client privilege in order to allow the States to review the accounts. The Accountant shall not sell consumers' names or other account information or use the consumers' names or other account information for any other purposes than those set forth in this Assurance. Level agrees that it shall be appropriate for any respective Attorney General to file a motion with the appropriate court for the court to order the oversight of an accounting firm for the refund program if the Attorney General establishes by a preponderance of the evidence that any refund amounts paid in the particular state have been calculated improperly. If, in enforcing the provisions of this Assurance, the States, after discussing the matter with Level and/or its counsel, believe it is necessary to review the Customer List and/or retain the Customer List to contact consumers, the parties agree that the Customer List shall be provided pursuant to the individual State's civil investigative demand or subpoena statutes, if such statutes deem the information confidential, otherwise, the individual State will treat the information as if it is confidential under the State's freedom of information/public records act. However, the provisions of this paragraph regarding review by the States of the Customer List shall not apply to the State of Iowa. Level understands that the Attorney General of Iowa will serve Level with a Demand for Information to obtain the Customer List from Level pursuant to Iowa Code section 714.16(3) should the Attorney General deem it necessary to obtain the Customer List. Level does not waive any defense it may raise to any legal action which may be filed by the Attorney General of Iowa to obtain a response to that Demand for Information.

50. In order to facilitate the Accountant's determination of the amount of any refund, chargeback and/or credit due to any consumers under paragraph 48, Level shall abide by the following guidelines and include any applicable provisions in its contract and/or letter of engagement with the Accountant:

- a. Level shall make available to the Accountant, at no cost, all documents, persons,

and other information necessary to the Accountant to assist the Accountant in the performance of its duties under the Assurance and for its calculations in determining Level's compliance with the restitution provisions of this Assurance.

- b. The Accountant shall employ procedures to determine compliance and payment shall be developed by the Accountant in accordance with the applicable standards established by the American Institute of Certified Public Accountants and shall include testing and such other procedures sufficient to enable the Accountant to render an opinion concerning Level's assertion of compliance with this Assurance.
 - c. Level, through the Accountant, within a reasonable time (not to exceed thirty (30) business days) following the date that all payments must be made to consumers pursuant to this Assurance, shall provide to the Attorneys General a written report that certifies that Level, through the Accountant, has properly calculated the amounts payable to consumers and paid those amounts in accordance with this Assurance. Such written report shall describe the process Level used, through the Accountant, to calculate the amounts owed to consumers.
 - d. The Accountant shall make available to the respective Attorney General within fifteen (15) business days of a written request, copies of all records, documents, reports and work papers obtained or prepared in connection with the duties set forth herein.
 - e. The Attorney Generals may review all consumer claims that are denied by the Accountant to determine, in their sole discretion, whether such denial was appropriate.
51. Within fifteen (15) business days of receiving a written complaint, Level shall notify the respective State of the consumer's name, address, telephone number, account number and nature of complaint and submit copies of the consumer's contract(s), any written correspondence and account history.
52. The refunds, chargebacks and/or credits set forth in paragraph 48 shall be provided by Level upon the following terms:

- a. Within thirty (30) business days of Level's receipt of a consumer complaint from any of the Attorneys General⁵ regarding Level's Contract or business practices, Level shall provide the respective Attorney General with a written response which sets forth the type(s) of fees, the price per gallon of propane charged to the consumer versus the amount quoted to the consumer in any writing, the amount of each charge, the dates of each charge, the amount the consumer paid toward each charge and the total amount of the refund to which the consumer is entitled.
- b. If within forty-five (45) business days from the date the respective Attorney General receives Level's written response as set forth in paragraph 52(a) the consumer disputes the amount to which he/she is entitled to receive, as calculated by Level, and provides to the respective Attorney General documentation to support a different amount, Level shall refund, chargeback and/or credit the amount which is supported by the documentation within fifteen (15) business days of notification by the respective Attorney General.
- c. Within thirty (30) business days of notification by the respective Attorney General that the consumer does not dispute the amount to which he/she is entitled, Level shall refund, chargeback and/or credit the full amount of any charges to the consumer under the Contract as calculated by Level in the initial response.
- d. Level shall provide a copy of the refund check, or evidence of credit/ chargeback, as the case may be, to the respective Attorney General, in weekly batches within seven (7) business days of the mailing of the refund check or evidence of credit/ chargeback, as the case may be, to the consumer.
- e. In the event Level is unable to locate consumers entitled to a refund, those funds due to such consumers shall be treated as unclaimed property in the possession of the respective State or as otherwise provided under State law.
- f. Level shall be responsible for all mailing and processing costs associated with the

⁵ In the State of Tennessee, Level would receive consumer complaints from the Tennessee Division of Consumer Affairs, 500 James Robertson Parkway, Fifth Floor, Nashville, TN 37243-0600.

refund process set forth in this redress section of the Assurance.

- g. Within four (4) months of execution of this Assurance, Level shall file with the Attorney General of each State, an alphabetical list of the name and address of each consumer who requested an adjustment, the amount of each individual consumer's refund, chargeback and/or credit and the total amount of all refunds, chargebacks, and/or credits provided for each State. Such reports shall be supplemented as needed.
 - h. Within ten (10) business days of receipt of a request from a State for evidence that a specific consumer or consumers have received their refunds, chargebacks and/or credits, Level shall provide written verification by providing any documents, books and records necessary to establish to the satisfaction of the requesting State that the refund/chargeback/credit process was completed in compliance with this Assurance. Such documents shall include, but not be limited to, copies of the front and back of canceled checks and/or mailing records along with certified mail receipts indicating that the specific consumer or consumers received the required item. The documents, books or records shall be physically turned over and provided to the requesting State no later than ten (10) business days from receipt of such request.
53. For consumers who have entered into a Contract with Level as of the date of this Assurance, Level shall notify all credit reporting agencies to remove any negative or derogatory information within sixty (60) calendar days of signing this Assurance.
54. Upon signing this Assurance, the "Governing Law" paragraph of the Contract shall be null and void for all Contracts made at any time after August 1, 1998; provided however, that any completed litigation of any Contract shall not be set aside by reason of this paragraph of the Assurance.

VII. PAYMENT MADE TO THE STATES

55. Level shall pay the sum of \$700,000.00 to the Attorney General of the Commonwealth of Pennsylvania on behalf of the Attorneys General of the States of Arizona, Indiana, Iowa,

Missouri, New Mexico, Pennsylvania, Tennessee and Wisconsin to be divided as determined by the Attorneys General for attorneys' fees and investigative costs, consumer education, litigation, public protection or local consumer aid funds, at the discretion of each State's Attorney General as allowed by each State's law. The amount of \$700,000.00 shall be paid in four (4) payments as follows: (a) \$100,000.00 upon the signing of this Assurance; (b) \$250,000.00 on December 31, 2001; (c) \$200,000.00 on December 31, 2002; (d) \$150,000.00 on December 31, 2003.

56. Payments shall be made by cashier's check made payable to the "Commonwealth of Pennsylvania, Attorney General" and delivered to the Office of Attorney General, Bureau of Consumer Protection, 6^h Floor, Manor Complex, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219 or any other address upon written notification to Level.

VIII. MONITORING AND COMPLIANCE

57. If any Attorney General determines that Level has failed to comply with the terms of this Assurance and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the State, the Attorney General agrees to notify Level of such failure to comply and Level shall then have ten (10) calendar days from receipt of such notice to provide a good faith written response to the Attorney General's determination. The response shall include at a minimum:
- a. a statement that Level is in full compliance with the Assurance; and
 - b. a detailed explanation of how the alleged violation(s) occurred; and
 - c. a statement that the alleged breach has been cured and how; or
 - d. a statement that the alleged breach cannot be reasonably cured within ten (10) calendar days from receipt of the notice, but (i) Level has begun to take corrective action to cure the breach, (ii) Level is pursuing such corrective action with due and reasonable diligence, and (iii) Level has provided the Attorney General with a detailed and reasonable time table for curing the breach.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance, to compromise the authority of the Attorney General to initiate

a proceeding for any contempt or other sanctions for failure to comply or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of its respective State.

58. If after an Attorney General has permitted Level to respond in accordance with paragraph 57 of this Assurance, a majority of the Attorneys General determine that Level has failed to comply with the terms of this Assurance, upon demand by the Attorneys General, Level shall immediately pay the amount of \$500,000.00 to the Attorneys General as civil penalties to be divided equally between the Attorneys General. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of its respective State.
59. In the event Level fails to comply with this Assurance, the entire monetary balances under this Assurance then remaining become due and payable without notice and may be collected by execution, garnishment or other legal process, together with interest from the date of entry of this Assurance. Level agrees to pay all attorneys' fees and costs, including but not limited to court costs, associated with any such collection efforts and other actions to enforce the terms of this Assurance.
60. Upon signing of this Assurance, Level shall provide the States with a current address and telephone number where it can be contacted and served with process in the event of default until the monetary portions of this Assurance have been satisfied. Level shall further be required to provide any new address and telephone number within two (2) business days of relocating to a new address or of obtaining a new telephone number. Service upon Level for the purposes of enforcing the monetary portion of this Assurance in the event of default shall be effective upon mailing a notice via certified mail return receipt requested and waiting

thirty (30) calendar days, if no response is received the State may obtain a default judgment or other adverse ruling sought by the State.

61. Level agrees that if it defaults on any monetary payment herein the respective State may set aside this Assurance and obtain a judgment including full restitution for all consumers including statutory interest and the full amount of civil penalties and other remedies that would have been available to the State prior to entry of this Assurance.
62. Level shall give written notice of any bankruptcy filing to the Attorney General of each respective State with five (5) business days of such filing.
63. Upon request, Level agrees to provide books, records and documents to the States at any time, and further, to informally or formally under oath, provide testimony and other information to the States relating to compliance with this Assurance. Level shall make any requested information available within fourteen (14) business days of such request, at the Office of the Attorney General of the requesting State, or at Level, at the preference of the Office of Attorney General of that State. This Section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

IX. GENERAL TERMS OF ASSURANCE

64. This Assurance is for settlement purposes only and does not constitute an admission by Level that any of the allegations are in violation of any of the state consumer protection laws.
65. The parties agree that this Assurance does not constitute an approval by the Attorneys General of any of Level's past or future practices, and Level shall not make any representation to the contrary.
66. Nothing contained herein shall be construed to waive any individual right of action by any consumer, including any action for consequential damages, or any local, state, federal or other governmental entity.
67. Level shall not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance.

68. This Assurance may only be enforced by the parties hereto.
69. Nothing in this Assurance shall be construed as relieving Level of the obligation to comply with all state and federal laws, regulations and rules.
70. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
71. Level shall provide written notice within ten (10) business days of the entry of this Assurance and for a period of three (3) years thereafter to any agent, servant, employee, or representative of Level of the existence and terms of the Assurance entered in this case, and of their duty to comply with the terms set forth herein.
72. Level agrees that a violation by Level of any requirement of this Assurance shall constitute a violation of the respective States' consumer protection laws.
73. Where permitted under state law, the Attorney General of the respective State shall be entitled to seek and obtain a Consent Judgment, which shall name Level as defendant and which includes a permanent injunction, restitution and civil penalties. In the event the respective Attorney General seeks the entry of the above-referenced Consent Judgment, Level agrees that it will not oppose the entry of the Consent Judgment, unless it alleges it has complied in all respects with this Assurance and, in any event, agrees that it will not under any circumstances assert that a failure to comply with this Assurance is not a violation of the respective States' consumer protection laws. Such Attorney General agrees to provide Level with written notice of the Attorney General's intent to seek entry of the above-referenced Consent Judgment at least thirty (30) calendar days prior to seeking its entry and to permit Level an opportunity to cure any perceived defaults.
74. The parties agree that this Assurance will become binding and effective when executed by all of the parties.
75. Any notices required to be sent to the State or to Level under this Assurance shall be sent

by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document to the address set forth on the signature page(s) of this Assurance or to any other address as designated by the parties.

76. Any correspondence relating to a consumer complaint required shall be sent by United States mail to the address set forth on the signature page(s) of this Assurance or to any other address as designated by the parties.

77. Level has read and understands this Assurance and enters into it voluntarily, having been advised by its undersigned counsel of the meaning and effect of each provision of this Assurance.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

CYNTHIA E. KINSER
Deputy Attorney General
B.P.R. No. 13533

DANA M. AUSBROOKS
Assistant Attorney General
B.P.R. No. 20625
Tennessee Attorney General's Office
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-5512

Approved by:

DAVID A. MCCOLLUM
Director
The Division of Consumer Affairs of the
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR THE RESPONDENT:

Mr. Robert E. Cooper, Jr.
Counsel for Level Propane Gases, Inc.
B.P.R. No.
Bass, Berry & Sims, P.L.C.
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-0002
(615) 742-6207

#47885